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Ervin Bill
Berk

91ST CONGRESS
1ST SESSION

S. 782

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 1969

Mr. ERVIN (for himself, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. COOPER, Mr. DIRKSEN, Mr. DODD, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. HATFIELD, Mr. HRUSKA, Mr. INOUE, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MCCARTHY, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONTOYA, Mr. MUNDT, Mr. MUSKIE, Mr. NELSON, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXMIRE, Mr. RANDOLPH, Mr. SAXBE, Mr. SCHWEIKER, Mr. SCOTT, Mr. SPARKMAN, Mr. SPONG, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YARBOROUGH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. It shall be unlawful for any officer of any
4 executive department or any executive agency of the United

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1 States Government, or for any person acting or purporting
2 to act under his authority, to do any of the following things:

3 (a) To require or request, or to attempt to require or
4 request, any civilian employee of the United States serving
5 in the department or agency, or any person seeking employ-
6 ment in the executive branch of the United States Govern-
7 ment, to disclose his race, religion, or national origin, or
8 the race, religion, or national origin of any of his fore-
9 bears: *Provided, however,* That nothing contained in this
10 subsection shall be construed to prohibit inquiry concerning
11 the citizenship of any such employee or person if his citizen-
12 ship is a statutory condition of his obtaining or retaining his
13 employment: *Provided further,* That nothing contained in
14 this subsection shall be construed to prohibit inquiry concern-
15 ing the national origin of any such employee when such in-
16 quiry is deemed necessary or advisable to determine suit-
17 ability for assignment to activities or undertakings related to
18 the national security within the United States or to activities
19 or undertakings of any nature outside the United States.

20 (b) To state or intimate, or to attempt to state or inti-
21 mate, to any civilian employee of the United States serving
22 in the department or agency that any notice will be taken of
23 his attendance or lack of attendance at any assemblage, dis-
24 cussion, or lecture held or called by any officer of the execu-
25 tive branch of the United States Government, or by any per-

1 son acting or purporting to act under his authority, or by any
2 outside parties or organizations to advise, instruct, or in-
3 doctrinate any civilian employee of the United States serving
4 in the department or agency in respect to any matter or
5 subject other than the performance of official duties to which
6 he is or may be assigned in the department or agency, or
7 the development of skills, knowledge, or abilities which
8 qualify him for the performance of such duties: *Provided,*
9 *however,* That nothing contained in this subsection shall be
10 construed to prohibit taking notice of the participation of a
11 civilian employee in the activities of any professional group
12 or association.

13 (c) To require or request, or to attempt to require or
14 request, any civilian employee of the United States serving
15 in the department or agency to participate in any way in
16 any activities or undertakings unless such activities or under-
17 takings are related to the performance of official duties to
18 which he is or may be assigned in the department or agency,
19 or to the development of skills, knowledge, or abilities which
20 qualify him for the performance of such duties.

21 (d) To require or request, or to attempt to require
22 or request, any civilian employee of the United States serv-
23 ing in the department or agency to make any report con-
24 cerning any of his activities or undertakings unless such
25 activities or undertakings are related to the performance of

1 official duties to which he is or may be assigned in the
2 department or agency, or to the development of skills, knowl-
3 edge, or abilities which qualify him for the performance of
4 such duties, or unless there is reason to believe that the
5 civilian employee is engaged in outside activities or employ-
6 ment in conflict with his official duties.

7 (e) To require or request, or to attempt to require or
8 request, any civilian employee of the United States serving
9 in the department or agency, or any person applying for
10 employment as a civilian employee in the executive branch
11 of the United States Government, to submit to any interroga-
12 tion or examination or to take any psychological test which
13 is designed to elicit from him information concerning his
14 personal relationship with any person connected with him
15 by blood or marriage, or concerning his religious beliefs or
16 practices, or concerning his attitude or conduct with respect
17 to sexual matters: *Provided, however,* That nothing con-
18 tained in this subsection shall be construed to prevent
19 a physician from eliciting such information or authorizing
20 such tests in the diagnosis or treatment of any civilian
21 employee or applicant where such physician deems such
22 information necessary to enable him to determine whether
23 or not such individual is suffering from mental illness: *Pro-*
24 *vided further, however,* That this determination shall be made
25 in individual cases and not pursuant to general practice or

1 regulation governing the examination of employees or appli-
2 cants according to grade, agency, or duties: *Provided further,*
3 *however,* That nothing contained in this subsection shall be
4 construed to prohibit an officer of the department or agency
5 from advising any civilian employee or applicant of a specific
6 charge of sexual misconduct made against that person, and
7 affording him an opportunity to refute the charge.

8 (f) To require or request, or attempt to require or
9 request, any civilian employee of the United States serving
10 in the department or agency, or any person applying for
11 employment as a civilian employee in the executive branch
12 of the United States Government, to take any polygraph
13 test designed to elicit from him information concerning his
14 personal relationship with any person connected with him
15 by blood or marriage, or concerning his religious beliefs or
16 practices, or concerning his attitude or conduct with respect
17 to sexual matters.

18 (g) To require or request, or to attempt to require
19 or request, any civilian employee of the United States serving
20 in the department or agency to support by personal endeavor
21 or contribution of money or any other thing of value the
22 nomination or the election of any person or group of persons
23 to public office in the Government of the United States or of
24 any State, district, Commonwealth, territory, or possession

1 of the United States, or to attend any meeting held to pro-
2 mote or support the activities or undertakings of any political
3 party of the United States or of any State, district, Common-
4 wealth, territory, or possession of the United States.

5 (h) To coerce or attempt to coerce any civilian
6 employee of the United States serving in the department or
7 agency to invest his earnings in bonds or other obligations
8 or securities issued by the United States or any of its depart-
9 ments or agencies, or to make donations to any institution
10 or cause of any kind: *Provided, however,* That nothing con-
11 tained in this subsection shall be construed to prohibit any
12 officer of any executive department or any executive agency
13 of the United States Government, or any person acting or
14 purporting to act under his authority, from calling meetings
15 and taking any action appropriate to afford any civilian em-
16 ployee of the United States the opportunity voluntarily to
17 invest his earnings in bonds or other obligations or securities
18 issued by the United States or any of its departments or
19 agencies, or voluntarily to make donations to any institution
20 or cause.

21 (i) To require or request, or to attempt to require
22 or request, any civilian employee of the United States
23 serving in the department or agency to disclose any items
24 of his property, income, or other assets, source of income,
25 or liabilities, or his personal or domestic expenditures or

1 those of any member of his family or household: *Provided*,
2 *however*, That this subsection shall not apply to any civilian
3 employee who has authority to make any final determination
4 with respect to the tax or other liability of any person, cor-
5 poration, or other legal entity to the United States, or
6 claims which require expenditure of moneys of the United
7 States: *Provided further, however*, That nothing contained
8 in this subsection shall prohibit the Department of the
9 Treasury or any other executive department or agency of
10 the United States Government from requiring any civilian
11 employee of the United States to make such reports as may
12 be necessary or appropriate for the determination of his
13 liability for taxes, tariffs, custom duties, or other obliga-
14 tions imposed by law.

15 (j) To require or request, or to attempt to require
16 or request, any civilian employee of the United States
17 embraced within the terms of the proviso in subsection
18 (i) to disclose any items of his property, income, or
19 other assets, source of income, or liabilities, or his personal
20 or domestic expenditures or those of any member of his
21 family or household other than specific items tending to
22 indicate a conflict of interest in respect to the perform-
23 ance of any of the official duties to which he is or may be
24 assigned.

25 (k) To require or request, or to attempt to require or

1 request, any civilian employee of the United States serving
2 in the department or agency, who is under investigation for
3 misconduct, to submit to interrogation which could lead to
4 disciplinary action without the presence of counsel or other
5 person of his choice, if he so requests.

6 (1) To discharge, discipline, demote, deny promo-
7 tion to, relocate, reassign, or otherwise discriminate in
8 regard to any term or condition of employment of, any civil-
9 ian employee of the United States serving in the department
10 or agency, or to threaten to commit any of such acts, by
11 reason of the refusal or failure of such employee to submit
12 to or comply with any requirement, request, or action made
13 unlawful by this Act, or by reason of the exercise by such
14 civilian employee of any right granted or secured by this
15 Act.

16 SEC. 2. It shall be unlawful for any officer of the United
17 States Civil Service Commission, or for any person acting
18 or purporting to act under his authority, to do any of the
19 following things:

20 (a) To require or request, or to attempt to require or
21 request, any executive department or any executive agency
22 of the United States Government, or any officer or employee
23 serving in such department or agency, to violate any of the
24 provisions of section 1 of this Act.

25 (b) To require or request, or to attempt to require or

1 SEC. 4. Whenever any officer of any executive depart-
2 ment or any executive agency of the United States Gov-
3 ernment, or any person acting or purporting to act under his
4 authority, or any commissioned officer as defined in section
5 101 of title 10, United States Code, or any member of the
6 Armed Forces acting or purporting to act under his author-
7 ity, violates or threatens to violate any of the provisions of
8 section 1, 2, or 3 of this Act, any civilian employee of the
9 United States serving in any department or agency of the
10 United States Government, or any person applying for
11 employment in the executive branch of the United States
12 Government, or any person seeking to establish civil service
13 status or eligibility for employment in the executive branch
14 of the United States Government, affected or aggrieved by
15 the violation or threatened violation, may bring a civil action
16 in his own behalf or in behalf of himself and others
17 similarly situated, against the offending officer or person in
18 the United States district court for the district in which the
19 violation occurs or is threatened, or the district in which the
20 offending officer or person is found, or in the United States
21 District Court for the District of Columbia, to prevent
22 the threatened violation or to obtain redress against the
23 consequences of the violation. The Attorney General shall
24 defend all officers or persons sued under this section
25 who acted pursuant to an order, regulation, or directive,

1 or who, in his opinion, did not willfully violate the
2 provisions of this Act. Such United States district court
3 shall have jurisdiction to try and determine such civil action
4 irrespective of the actuality or amount of pecuniary injury
5 done or threatened, and without regard to whether the
6 aggrieved party shall have exhausted any administrative
7 remedies that may be provided by law, and to issue such
8 restraining order, interlocutory injunction, permanent in-
9 junction, or mandatory injunction, or enter such other judg-
10 ment or decree as may be necessary or appropriate to prevent
11 the threatened violation, or to afford the plaintiff and others
12 similarly situated complete relief against the consequences of
13 the violation. With the written consent of any person
14 effected or aggrieved by a violation or threatened violation
15 of section 1, 2, or 3 of this Act, any employee organization
16 may bring such action on behalf of such person, or may
17 intervene in such action. For the purposes of this section,
18 employee organizations shall be construed to include any
19 brotherhood, council, federation, organization, union, or pro-
20 fessional association made up in whole or in part of civilian
21 employees of the United States and which has as one of its
22 purposes dealing with departments, agencies, commissions,
23 and independent agencies of the United States concerning
24 the condition and terms of employment of such employees.

25 SEC. 5. (a) There is hereby established a Board on

1 request, any person seeking to establish civil service status
2 or eligibility for employment in the executive branch of the
3 United States Government, or any person applying for em-
4 ployment in the executive branch of the United States Gov-
5 ernment, or any civilian employee of the United States
6 serving in any department or agency of the United States
7 Government, to submit to any interrogation or examination
8 or to take any psychological test which is designed to elicit
9 from him information concerning his personal relationship
10 with any person connected with him by blood or marriage,
11 or concerning his religious beliefs or practices, or concerning
12 his attitude or conduct with respect to sexual matters: *Pro-*
13 *vided, however,* That nothing contained in this subsection
14 shall be construed to prevent a physician from eliciting such
15 information or authorizing such tests in the diagnosis or
16 treatment of any civilian employee or applicant where such
17 physician deems such information necessary to enable him
18 to determine whether or not such individual is suffering
19 from mental illness: *Provided further, however,* That this
20 determination shall be made in individual cases and not pur-
21 suant to general practice or regulation governing the exami-
22 nation of employees or applicants according to grade, agency,
23 or duties: *Provided further, however,* That nothing contained
24 in this subsection shall be construed to prohibit an officer of

1 the Civil Service Commission from advising any civilian
2 employee or applicant of a specific charge of sexual miscon-
3 duct made against that person, and affording him an oppor-
4 tunity to refute the charge.

5 (c) To require or request, or to attempt to require
6 or request, any person seeking to establish civil service
7 status or eligibility for employment in the executive branch
8 of the United States Government, or any person applying
9 for employment in the executive branch of the United States
10 Government, or any civilian employee of the United States
11 serving in any department or agency of the United States
12 Government, to take any polygraph test designed to elicit
13 from him information concerning his personal relationship
14 with any person connected with him by blood or marriage,
15 or concerning his religious beliefs or practices, or concerning
16 his attitude or conduct with respect to sexual matters.

17 SEC. 3. It shall be unlawful for any commissioned officer,
18 as defined in section 101 of title 10, United States Code, or
19 any member of the Armed Forces acting or purporting to
20 act under his authority, to require or request, or to attempt
21 to require or request, any civilian employee of the executive
22 branch of the United States Government under his authority
23 or subject to his supervision to perform any of the acts or
24 submit to any of the requirements made unlawful by section
25 1 of this Act.

1 Employees' Rights (hereinafter referred to as the "Board").
2 The Board shall be composed of three members, appointed
3 by the President, by and with the advice and consent of the
4 Senate. The President shall designate one member as chair-
5 man. No more than two members of the Board may be of
6 the same political party. No member of the Board shall be
7 an officer or employee of the United States Government.

8 (b) The term of office of each member of the Board
9 shall be five years, except that (1) of those members first
10 appointed, one shall serve for five years, one for three years,
11 and one for one year, respectively, from the date of enact-
12 ment of this Act, and (2) any member appointed to fill
13 a vacancy occurring prior to the expiration of the term for
14 which his predecessor was appointed shall be appointed for
15 the remainder of such term.

16 (c) Members of the Board shall be compensated at the
17 rate of \$75 a day for each day spent in the work of the
18 Board, and shall be paid actual travel expenses and per
19 diem in lieu of subsistence expenses when away from their
20 usual places of residence, as authorized by section 5703 of
21 title 5, United States Code.

22 (d) Two members shall constitute a quorum for the
23 transaction of business.

24 (e) The Board may appoint and fix the compensation

1 of such officers, attorneys, and employees, and make such
2 expenditures, as may be necessary to carry out its functions.

3 (f) The Board shall make such rules and regulations
4 as shall be necessary and proper to carry out its functions.

5 (g) The Board shall have the authority and duty to
6 receive and investigate written complaints from or on be-
7 half of any person claiming to be affected or aggrieved by
8 any violation or threatened violation of this Act and to con-
9 duct a hearing on each such complaint. Within ten days
10 after the receipt of any such complaint, the Board shall
11 furnish notice of the time, place, and nature of the hearing
12 thereon to all interested parties. The Board shall render
13 its final decision with respect to any complaint within thirty
14 days after the conclusion of its hearing thereon.

15 (h) Officers or representatives of any Federal employee
16 organization in any degree concerned with employment of
17 the category in which any alleged violation of this Act
18 occurred or is threatened shall be given an opportunity to
19 participate in each hearing conducted under this section,
20 through submission of written data, views, or arguments,
21 and in the discretion of the Board, with opportunity for oral
22 presentation. Government employees called upon by any
23 party or by any Federal employee organization to participate
24 in any phase of any administrative or judicial proceeding
25 under this section shall be free to do so without incurring

1 travel cost or suffering loss in leave or pay; and all such em-
2 ployees shall be free from restraint, coercion, interference,
3 intimidation, or reprisal in or because of their participation.
4 Any periods of time spent by Government employees during
5 such participation shall be held and considered to be Federal
6 employment for all purposes.

7 (i) Insofar as consistent with the purposes of this sec-
8 tion, the provisions of subchapter II of chapter 5 of title 5,
9 United States Code, relating to the furnishing of notice and
10 manner of conducting agency hearings, shall be applicable
11 to hearings conducted by the Board under this section.

12 (j) If the Board shall determine after hearing that a
13 violation of this Act has not occurred or is not threatened,
14 the Board shall state its determination and notify all inter-
15 ested parties of such determination. Each such determina-
16 tion shall constitute a final decision of the Board for pur-
17 poses of judicial review.

18 (k) If the Board shall determine that any violation
19 of this Act has been committed or threatened by any civil-
20 ian officer or employee of the United States, the Board shall
21 immediately (1) issue and cause to be served on such of-
22 ficer or employee an order requiring such officer or employee
23 to cease and desist from the unlawful act or practice which
24 constitutes a violation, (2) endeavor to eliminate any such

1 unlawful act or practice by informal methods of conference,
2 conciliation, and persuasion, and (3) may—

3 (A) (i) in the case of the first offense by any
4 civilian officer or employee of the United States, other
5 than any officer appointed by the President, by and with
6 the advice and consent of the Senate, issue an official
7 reprimand against such officer or employee or order the
8 suspension without pay of such officer or employee from
9 the position or office held by him for a period of not to
10 exceed fifteen days, and (ii) in the case of a second
11 or subsequent offense by any such officer or employee,
12 order the suspension without pay of such officer or em-
13 ployee from the position or office held by him for a
14 period of not to exceed thirty days or order the removal
15 of such officer or employee from such position or office;
16 and

17 (B) in the case of any offense by any officer ap-
18 pointed by the President, by and with the advice and
19 consent of the Senate, transmit a report concerning such
20 violation to the President and the Congress.

21 (1) If the Board shall determine that any violation
22 of this Act has been committed or threatened by any officer
23 of any of the Armed Forces of the United States, or any
24 person purporting to act under authority conferred by such
25 officer, the Board shall (1) submit a report thereon to the

1 President, the Congress, and the Secretary of the military
2 department concerned, (2) endeavor to eliminate any un-
3 lawful act or practice which constitutes such a violation by
4 informal methods of conference, conciliation, and persuasion,
5 and (3) refer its determination and the record in the case
6 to any person authorized to convene general courts-martial
7 under section 822 (article 22) of title 10, United States
8 Code. Thereupon such person shall take immediate steps
9 to dispose of the matter under chapter 47 of title 10, United
10 States Code (Uniform Code of Military Justice).

11 (m) Any party aggrieved by any final determination
12 or order of the Board may institute, in the district court of
13 the United States for the judicial district wherein the viola-
14 tion or threatened violation of this Act occurred, or in the
15 United States District Court for the District of Columbia,
16 a civil action for the review of such determination or order.
17 In any such action, the court shall have jurisdiction to (1)
18 affirm, modify, or set aside any determination or order made
19 by the Board which is under review, or (2) require the
20 Board to make any determination or order which it is author-
21 ized to make under subsection (k), but which it has refused
22 to make. The reviewing court shall set aside any finding,
23 conclusion, determination, or order of the Board as to which
24 complaint is made which is unsupported by substantial evi-
25 dence on the record considered as a whole.

1 (n) The Board shall submit, not later than March 31
2 of each year, to the Senate and House of Representatives,
3 respectively, a report on its activities under this section dur-
4 ing the immediately preceding calendar year, including a
5 statement concerning the nature of all complaints filed with
6 it, its determinations and orders resulting from hearings
7 thereon, and the names of all officers or employees of the
8 United States with respect to whom any penalties have been
9 imposed under this section.

10 (o) There are authorized to be appropriated sums nec-
11 essary, not in excess of \$100,000, to carry out the provisions
12 of this section.

13 SEC. 6. Nothing contained in this Act shall be construed
14 to prohibit an officer of the Central Intelligence Agency or
15 of the National Security Agency or of the Federal
16 Bureau of Investigation from requesting any civilian em-
17 ployee or applicant to take a polygraph test, or to take a
18 psychological test, designed to elicit from him information
19 concerning his personal relationship with any person con-
20 nected with him by blood or marriage, or concerning his
21 religious beliefs or practices, or concerning his attitude or
22 conduct with respect to sexual matters, or to provide a per-
23 sonal financial statement, if the Director of the Central
24 Intelligence Agency or his designee or the Director of the
25 National Security Agency or his designee or the Director

1 of the Federal Bureau of Investigation or his designee makes
2 a personal finding with regard to each individual to be
3 so tested or examined that such test or information is required
4 to protect the national security.

5 SEC. 7. Nothing contained in sections 4 and 5 shall be
6 construed to prevent establishment of department and
7 agency grievance procedures to enforce this Act, but the
8 existence of such procedures shall not preclude any appli-
9 cant or employee from pursuing the remedies established
10 by this Act or any other remedies provided by law: *Pro-*
11 *vided, however,* That if under the procedures established,
12 the employee or applicant has obtained complete protection
13 against threatened violations or complete redress for vio-
14 lations, such action may be pleaded in bar in the United
15 States District Court or in proceedings before the Board on
16 Employee Rights: *Provided further, however,* That if an
17 employee elects to seek a remedy under either section 4 or
18 section 5, he waives his right to proceed by an independent
19 action under the remaining section.

20 SEC. 8. If any provision of this Act or the application
21 of any provision to any person or circumstance shall be held
22 invalid, the remainder of this Act or the application of such
23 provision to persons or circumstances other than those as to
24 which it is held invalid, shall not be affected.

91st CONGRESS
1st Session

S. 782

A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

By Mr. ERVIN, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. COOPER, Mr. DIRKSEN, Mr. DODD, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GUBNEY, Mr. HANSEN, Mr. HATFIELD, Mr. HRUSKA, Mr. INOUE, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MCCARTHY, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONTOYA, Mr. MUNDT, Mr. MUSKIE, Mr. NELSON, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXMIER, Mr. RANDOLPH, Mr. SAXE, Mr. SCHWEIKER, Mr. SCOTT, Mr. SPARKMAN, Mr. SPONG, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YARBOROUGH

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Read twice and referred to the Committee on the
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